

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

FREDERICK W. FISHER, JR.,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	No. 3:07-CV-01645
	:	
	:	(JUDGE CAPUTO)
BRIAN LaDUCA, LaDUCA GROUP	:	
LTD., and MONROE COUNTY TAX	:	
CLAIM BUREAU	:	
	:	
Defendants.	:	

**MEMORANDUM ORDER**

Plaintiff Frederick W. Fisher, Jr. Seeks to file a Complaint (Doc. 1) against Defendants Brian LaDuca, LaDuca Group Ltd., and the Monroe County Tax Claim Bureau, and has concurrently filed a motion to proceed *in forma pauperis*. (Doc. 2.) The decision whether to grant or deny *in forma pauperis* (IFP) status rests within the sound discretion of the district court. See *Jones v. Zimmerman*, 752 F.2d 76, 78 (3d Cir. 1985). 28 U.S.C. § 1915 provides a two-step process for reviewing *in forma pauperis* petitions. The Third Circuit Court of Appeals has made it clear that this Court should first consider a litigant's financial status and determine whether he is eligible to proceed *in forma pauperis*, before assessing the merits of the underlying complaint. *Roman v. Jeffes*, 904 F.2d 192 (3d Cir. 1990).

On September 11, 2007, this Court denied Plaintiff's motion to proceed *in forma pauperis* because although he had outlined his financial situation in his motion, he had failed to complete the appropriate Affidavit/Declaration to Proceed In Forma Pauperis, as required by the Court. (Mem. Order, Doc. 4.) The Court ordered Plaintiff to file the

appropriate form within 30 days of its order, and Plaintiff has now done so. (Aff. / Decl. in Supp. of Req. to Proceed In Forma Pauperis, Doc. 5.)

Plaintiff's filings show that he is a seventy-nine (79) year old man who is currently on parole after serving twelve (12) years in prison. (Compl. Doc. 1.) He was last employed in 1991, earning \$20,000 per year. (Doc. 5.) His affidavit states that his only source of income is from Social Security Disability Insurance payments, from which he states he has received six thousand dollars (\$6,000) in the past year. (*Id.*) His motion also mentions a "\$27.00 per month stripen [*sic*] and \$150.00 food stamps from the state." (Doc. 2.) He further states that he does not have money in any checking or savings accounts nor does he own any real estate, stocks, bonds, notes, automobiles, or other valuable property. (Doc. 5.) Indeed, the nature of his complaint is that the only property he owned, real estate worth \$30,000, was improperly seized for payment of taxes while he was in prison. (*Id.*; Compl., Doc. 1.)

His monthly expenses, according to his motion (Doc. 2.) include rent of four hundred dollars (\$400), various utilities expenses totaling one hundred thirty-six dollars (\$136), and court costs of forty dollars (\$40). (Doc. 2.)

"Poverty sufficient to qualify for *in forma pauperis* status does not require penniless destitution." *Goldstein*, 2001 WL 179868 at \*1 (alterations omitted) (citing *Ward v. Werner*, 61 F.R.D. 639, 640 (M.D. Pa.1974); *Adkins v. E.I. Du Pont De Nemours*, 335 U.S. 331, 69 S. Ct. 85, 93 L. Ed. 43 (1948)). In this case, it appears that petitioner is unable to pay the filing fee at this time. If the Court determines at a later date, however,

that petitioner may be able to pay the filing fee, his motion to proceed *in forma pauperis* will be reconsidered.

ACCORDINGLY, this 20th day of September, 2007, **IT IS HEREBY ORDERED**  
that:

1. Plaintiffs' motion to proceed *in forma pauperis* (Doc. 2) is **GRANTED**;
2. The Clerk of the Court shall prepare a summons for Plaintiff to serve with the complaint on the Defendants named herein;
3. The Defendants shall respond to the complaint within twenty (20) days of the date service is made pursuant to Fed. R. Civ. P. 12(a)(1).

/s/ A. Richard Caputo  
A. Richard Caputo  
United States District Judge